

SSB 6488 - S AMD 78

By Senators Hargrove, Regala, and Stevens

ADOPTED 02/15/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 43.43.753 and 2002 c 289 s 1 are each amended to read
4 as follows:

5 The legislature finds that recent developments in molecular biology
6 and genetics have important applications for forensic science. It has
7 been scientifically established that there is a unique pattern to the
8 chemical structure of the deoxyribonucleic acid (DNA) contained in each
9 cell of the human body. The process for identifying this pattern is
10 called "DNA identification."

11 The legislature further finds that DNA databases are important
12 tools in criminal investigations, in the exclusion of individuals who
13 are the subject of investigations or prosecutions, and in detecting
14 recidivist acts. It is the policy of this state to assist federal,
15 state, and local criminal justice and law enforcement agencies in both
16 the identification and detection of individuals in criminal
17 investigations and the identification and location of missing and
18 unidentified persons. Therefore, it is in the best interest of the
19 state to establish a DNA database and DNA data bank containing DNA
20 samples submitted by persons convicted of felony offenses and other
21 crimes as specified in RCW 43.43.754. DNA samples necessary for the
22 identification of missing persons and unidentified human remains shall
23 also be included in the DNA database.

24 The legislature further finds that the DNA identification system
25 used by the federal bureau of investigation and the Washington state
26 patrol has no ability to predict genetic disease or predisposal to
27 illness. Nonetheless, the legislature intends that biological samples
28 collected under RCW 43.43.754, and DNA identification data obtained
29 from the samples, be used only for purposes related to criminal

1 investigation, identification of human remains or missing persons, or
2 improving the operation of the system authorized under RCW 43.43.752
3 through 43.43.758.

4 **Sec. 2.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
5 as follows:

6 (1) A biological sample must be collected for purposes of DNA
7 identification analysis from:

8 (a) Every adult or juvenile individual convicted of a felony((~~r~~
9 ~~stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,~~
10 ~~communicating with a minor for immoral purposes under RCW 9.68A.090, or~~
11 ~~adjudicated guilty of an equivalent juvenile offense must have a~~
12 ~~biological sample collected for purposes of DNA identification analysis~~
13 ~~in the following manner)), or any of the following crimes (or~~
14 ~~equivalent juvenile offenses):~~

15 Assault in the fourth degree with sexual motivation (RCW 9A.36.041,
16 9.94A.835)

17 Communication with a minor for immoral purposes (RCW 9.68A.090)

18 Custodial sexual misconduct in the second degree (RCW 9A.44.170)

19 Failure to register (RCW 9A.44.130)

20 Harassment (RCW 9A.46.020)

21 Patronizing a prostitute (RCW 9A.88.110)

22 Prostitution (RCW 9A.88.030)

23 Sexual misconduct with a minor in the second degree (RCW 9A.44.096)

24 Stalking (RCW 9A.46.110)

25 Violation of a sexual assault protection order granted under
26 chapter 7.90 RCW; and

27 (b) Every adult or juvenile individual who is required to register
28 under RCW 9A.44.130.

29 (2) If the Washington state patrol crime laboratory already has a
30 DNA sample from an individual for a qualifying offense, a subsequent
31 submission is not required to be submitted.

32 (3) Biological samples shall be collected in the following manner:

33 (a) For persons convicted of ((~~such offenses~~)) any offense listed
34 in subsection (1)(a) of this section or adjudicated guilty of an

35 equivalent juvenile offense who do not serve a term of confinement in
36 a department of corrections facility, and do serve a term of

37 confinement in a city or county jail facility, the city or county shall

1 be responsible for obtaining the biological samples (~~either as part of~~
2 ~~the intake process into the city or county jail or detention facility~~
3 ~~for those persons convicted on or after July 1, 2002, or within a~~
4 ~~reasonable time after July 1, 2002, for those persons incarcerated~~
5 ~~before July 1, 2002, who have not yet had a biological sample~~
6 ~~collected, beginning with those persons who will be released the~~
7 ~~soonest~~)).

8 (b) The local police department or sheriff's office shall be
9 responsible for obtaining the biological samples for:

10 (i) Persons convicted of ((such offenses)) any offense listed in
11 subsection (1)(a) of this section or adjudicated guilty of an
12 equivalent juvenile offense who do not serve a term of confinement in
13 a department of corrections facility, and do not serve a term of
14 confinement in a city or county jail facility((, the local police
15 department or sheriff's office is responsible for obtaining the
16 biological samples after sentencing on or after July 1, 2002)); and

17 (ii) Persons who are required to register under RCW 9A.44.030.

18 (c) For persons convicted of ((such offenses)) any offense listed
19 in subsection (1)(a) of this section or adjudicated guilty of an
20 equivalent juvenile offense, who are serving or who are to serve a term
21 of confinement in a department of corrections facility or a department
22 of social and health services facility, the facility holding the person
23 shall be responsible for obtaining the biological samples ((either as
24 part of the intake process into such facility for those persons
25 convicted on or after July 1, 2002, or within a reasonable time after
26 July 1, 2002,)). For those persons incarcerated before ((July 1,
27 2002)) the effective date of this section, who have not yet had a
28 biological sample collected, ((beginning with)) priority shall be given
29 to those persons who will be released the soonest.

30 ((+2)) (4) Any biological sample taken pursuant to RCW 43.43.752
31 through 43.43.758 may be retained by the forensic laboratory services
32 bureau, and shall be used solely for the purpose of providing DNA or
33 other tests for identification analysis and prosecution of a criminal
34 offense or for the identification of human remains or missing persons.
35 Nothing in this section prohibits the submission of results derived
36 from the biological samples to the federal bureau of investigation
37 combined DNA index system.

1 ~~((3))~~ (5) The ~~((director of the))~~ forensic laboratory services
2 bureau of the Washington state patrol ~~((shall perform))~~ is responsible
3 for testing performed on all biological samples that are collected
4 under subsection (1) of this section, to the extent allowed by funding
5 available for this purpose. The director shall give priority to
6 testing on samples collected from those adults or juveniles convicted
7 of a felony or adjudicated guilty of an equivalent juvenile offense
8 that is defined as a sex offense or a violent offense in RCW 9.94A.030.
9 Known duplicate samples may be excluded from testing unless testing is
10 deemed necessary or advisable by the director.

11 ~~((4) This section applies to all adults who are convicted of a sex~~
12 ~~or violent offense after July 1, 1990; and to all adults who were~~
13 ~~convicted of a sex or violent offense on or prior to July 1, 1990, and~~
14 ~~who are still incarcerated on or after July 25, 1999. This section~~
15 ~~applies to all juveniles who are adjudicated guilty of a sex or violent~~
16 ~~offense after July 1, 1994; and to all juveniles who were adjudicated~~
17 ~~guilty of a sex or violent offense on or prior to July 1, 1994, and who~~
18 ~~are still incarcerated on or after July 25, 1999. This section applies~~
19 ~~to all adults and juveniles who are convicted of a felony other than a~~
20 ~~sex or violent offense, stalking under RCW 9A.46.110, harassment under~~
21 ~~RCW 9A.46.020, or communicating with a minor for immoral purposes under~~
22 ~~RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,~~
23 ~~on or after July 1, 2002; and to all adults and juveniles who were~~
24 ~~convicted or adjudicated guilty of such an offense before July 1, 2002,~~
25 ~~and are still incarcerated on or after July 1, 2002.))~~ (6) This section
26 applies to all adults and juveniles who:

27 (a) Are convicted or adjudicated guilty of an offense listed in
28 subsection (1)(a) of this section on or after the effective date of
29 this section and to all adults and juveniles who were convicted or
30 adjudicated guilty of such an offense before the effective date of this
31 section, and who are still incarcerated on or after the effective date
32 of this section; or

33 (b) Are currently required to register under RCW 9A.44.130, whether
34 convicted before, on, or after the effective date of this section.

35 ~~((5))~~ (7) This section creates no rights in a third person. No
36 cause of action may be brought based upon the noncollection or
37 nonanalysis or the delayed collection or analysis of a biological
38 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

1 ~~((6))~~ (8) The detention, arrest, or conviction of a person based
2 upon a database match or database information is not invalidated if it
3 is determined that the sample was obtained or placed in the database by
4 mistake, or if the conviction or juvenile adjudication that resulted in
5 the collection of the biological sample was subsequently vacated or
6 otherwise altered in any future proceeding including but not limited to
7 posttrial or postfact-finding motions, appeals, or collateral attacks.

8 **Sec. 3.** RCW 43.43.7541 and 2002 c 289 s 4 are each amended to read
9 as follows:

10 Every sentence imposed under chapter 9.94A RCW~~((7))~~ for a
11 ~~((felony))~~ crime specified in RCW 43.43.754 ~~((that is committed on or~~
12 ~~after July 1, 2002,))~~ must include a fee of one hundred dollars ~~((for~~
13 ~~collection of a biological sample as required under RCW 43.43.754,~~
14 ~~unless the court finds that imposing the fee would result in undue~~
15 ~~hardship on the offender)).~~ The fee is a court-ordered legal financial
16 obligation as defined in RCW 9.94A.030, payable by the offender after
17 payment of all other legal financial obligations included in the
18 sentence has been completed. The clerk of the court shall transmit
19 eighty percent of the fee~~((s))~~ collected to the state treasurer for
20 deposit in the state DNA database account created under RCW 43.43.7532,
21 and shall transmit twenty percent of the fee collected to the agency
22 responsible for collection of a biological sample from the offender as
23 required under RCW 43.43.754.

24 **Sec. 4.** RCW 43.43.756 and 1989 c 350 s 5 are each amended to read
25 as follows:

26 The Washington state patrol ~~((in consultation with the University~~
27 ~~of Washington school of medicine))~~ forensic laboratory services bureau
28 may:

29 (1) Provide DNA analysis services to law enforcement agencies
30 throughout the state ~~((after July 1, 1990));~~

31 (2) Provide assistance to law enforcement officials and prosecutors
32 in the preparation and utilization of DNA evidence for presentation in
33 court; and

34 (3) Provide expert testimony in court on DNA evidentiary issues."

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1 On page 1, line 2 of the title, after "persons;" strike the
2 remainder of the title and insert "and amending RCW 43.43.753,
3 43.43.754, 43.43.7541, and 43.43.756."

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